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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Assessment and Collection of Regulatory )  
Fees for Fiscal Year 2000 )

MD Docket No. 98-200

To: The Commission

**Reply Comments of Blooston, Mordkofsky, Jackson & Dickens**

The Washington, D.C. telecommunications law firm of Blooston, Mordkofsky, Jackson & Dickens (BMJD), on behalf of its clients in the Cellular Radiotelephone Service, 800/900 MHz Specialized Mobile Radio Service, and Broadband Personal Communications Service, and pursuant to Section 1.415(c) of the Commission's Rules, hereby submits reply comments in the above-captioned proceeding.

BMJD supports the comments of The Cellular Telecommunications Industry Association (CTIA), BellSouth Corporation (BellSouth), and AirTouch Communications, Inc. (AirTouch) (collectively, the Commenters), insofar as they challenge the Commission's methodology and tentative conclusion that the regulatory fee for the Commercial Mobile Radio Service (CMRS) mobile services should be increased from \$0.29 to \$0.32 per subscriber. Comments of CTIA at 2 – 8, Comments of BellSouth at 7 – 8, and Comments of AirTouch at 1 – 3.

The Commission's methodology for calculating regulatory fees is required to be based upon the cost of regulation for the particular service. See Section 9 of the Communications Act of 1934, as amended (the Act). In determining the appropriate

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regulatory fee, the Commission should first calculate the cost of regulation for the service, and then divide it by the estimated number of payment units (e.g., the number of subscribers, mobile units, pagers, cellular telephones, call signs, etc.). See Id. This equation provides the regulatory fee for the particular service per payment unit. It is apparent that the cost of regulation for the CMRS mobile services should decline given the Commission's deregulatory efforts and its move toward market area licensing. As a result, the fact that there may be more payment units should not automatically translate into a higher cost of regulation for the particular service. Quite to the contrary, the Commission should experience economies of scale – the same regulatory effort being necessary but more payment units available, thereby resulting in a lower cost per unit.

Further skewing the Commission's regulatory fee calculation upward is the use of FY 1998 payment units (which represent the base figures against which regulatory fees are calculated) versus the total revenues that must be collected for FY 1999. Because the Commission's analysis does not take into account the growth in the telecommunications industry, e.g., new cellular and PCS subscribers,<sup>1</sup> from FY 1998 to FY 1999, the Commission has understated the estimated revenues that it would receive. This is a critical omission in making adjustments to the fee schedule, in order to collect the

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<sup>1</sup> For FY 1998 and FY 1999, the Commission estimated 55,540,000 CMRS mobile service units. See Notice of Proposed Rulemaking, Attachment C. CTIA, in its Semi-annual Wireless Survey, estimated the total number of CMRS subscriber units for FY 1999 as 69,209,000, a figure that is 25 percent greater than that used by the Commission in calculating the CMRS mobile services regulatory fee for FY 1999. See Comments of CTIA at 6. CTIA's conclusion is supported by a report on the wireless industry issued by Dondaldson, Lufkin & Jenrette, see Id. at 7, and Chairman Kennard's address at Wireless '99 that "there are over 68 million Americans who own a mobile phone." See Id. at 7 – 8.

additional \$10 million required for FY 1999.<sup>2</sup> Because the Commission has understated the number of CMRS payment units, it overstated the amount of increase (if any) that would be required to make up any shortfall in regulatory fees attributable to the CMRS mobile services. The result would be a substantial over-collection in monies that will far exceed the amount necessary to repay the \$172.52 million Congressional appropriation to the Commission. This same issue has been recognized by other industry groups in that, with respect to their services, any increases in regulatory fees do not appear to be based upon the cost of regulation for the regulatory fee category. See Comments of NAB at 2, Comments of the Satellite Industry Association at 4.

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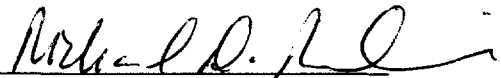
<sup>2</sup> The additional \$10 million represents a six percent increase in the regulatory fee to be collected in FY 1999 over that collected in FY 1998. However, the Commission has calculated a 9.4 percent revenue requirement factor to the "Computed FY 1999 Revenue Requirement" to calculate the required regulatory fee for each fee category. As a result, the percentage of proposed increase is significantly higher than that adopted by Congress. See Comments of the National Association of Broadcasters (NAB), at 2.

For the foregoing reasons, the Commission should adjust its regulatory fee calculations to (i) better approximate the funds it must reimburse to the Treasury and (ii) more accurately estimate the payment units for each regulatory fee category.

Respectfully submitted,

**BLOOSTON, MORDKOFsky,  
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Dated: April 29, 1999

# **CERTIFICATE OF SERVICE**

I, Althea B. Pierce, do hereby certify that on this 29th day of April, 1999, a copy of the foregoing Reply Comments was mailed by first class United States mail, postage prepaid, to the parties listed below:

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A handwritten signature in black ink, appearing to read 'Althea B. Pierce', written over a horizontal line.

Althea B. Pierce